

AO 120 (Rev. 3/04)

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Middle District of Florida, Tampa on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 8:08-cv-1893-T-33MAP	DATE FILED 9/23/08	U.S. DISTRICT COURT Middle District of Florida - Tampa Division
PLAINTIFF  ALPS SOUTH, LLC, a Florida Corporation		DEFENDANT  THE OHIO WILLOW WOOD COMPANY, an Ohio Corporation
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1. Amended complaint		see attached amended complaint filed 11/11/2008
2 6,552,109 <sup>PT</sup>		
3 5,633,286		
4 6,867,253 <sup>PT</sup>		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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3			
4			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  Sheryl L. Loesch	(BY) DEPUTY CLERK  Carrie Ayers	DATE  11/12/2008
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

ALPS SOUTH, LLC,  
a Florida limited liability company,

Plaintiff,

v.

Case No. 8:08-CIV-1893-T-33MAP

THE OHIO WILLOW WOOD  
COMPANY, an Ohio corporation,

Defendant.

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**FIRST AMENDED COMPLAINT AND DEMAND FOR  
JURY TRIAL, INJUNCTIVE RELIEF SOUGHT**

Plaintiff, ALPS SOUTH, LLC, sues Defendant, THE OHIO WILLOW WOOD COMPANY, and as its First Amended Complaint states as follows:

**NATURE OF ACTION**

1. This is an action for patent infringement under the United States Patent Law, 35 U.S.C. § 271 et. seq.

**PARTIES**

2. Plaintiff, ALPS SOUTH, LLC ("Plaintiff"), is a Florida limited liability company with its principal place of business in St. Petersburg, Florida. Plaintiff is engaged in the business of manufacturing and selling prosthetic liners for use by customers who have prosthetic limbs.

3. Defendant, THE OHIO WILLOW WOOD COMPANY ("Defendant"), is an Ohio corporation with its principal place of business in Mt. Sterling, Ohio. Defendant is engaged in the same type of business as, and is a competitor of, Plaintiff.

### **JURISDICTION AND VENUE**

4. This Court has exclusive subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 in that this Complaint states an action based upon a federal question relating to patents.

5. Defendant is subject to jurisdiction in Florida because it has engaged in business in, or has an office in, the State of Florida; is engaged in substantial and not isolated activity within the State of Florida; and/or has committed acts of infringement in the State of Florida.

6. Venue is proper in this district and in this division under 28 U.S.C. §§ 1391 and 1400.

### **CLAIM FOR PATENT INFRINGEMENT**

7. Plaintiff is engaged in the business of manufacturing and selling prosthetic liners for use by customers who have prosthetic limbs.

8. On March 8, 1996, a patent application was filed with the U.S. Patent and Trademark Office to protect Mr. John Y. Chen's invention entitled "Gelatinous Elastomer Compositions and Articles," which application was assigned Serial No. 08/612,586. The ownership rights to the invention disclosed and claimed in the application were assigned to Applied Elastomerics, Inc. ("AEI").

9. On April 22, 2003, United States Patent No. 6,552,109 B1 (the "'109 Patent") was duly, validly, and legally issued to AEI, which remains the owner of all right, title, and interest in and to the '109 Patent. A true and correct copy of the '109 Patent is attached hereto as Exhibit 1.

10. On August 11, 1994, a patent application was filed with the U.S. Patent and Trademark Office to protect Mr. John Y. Chen's invention entitled "Gelatinous Elastomer Articles," which application was assigned Serial No. 288,690. The ownership rights to the invention disclosed and claimed in the application were assigned to AEI.

11. On May 27, 1997, United States Patent No. 5,633,286 was duly, validly, and legally issued, and on October 10, 2000, a Reexamination Certificate for the same was duly, validly, and legally issued (collectively, the "'286 Patent'"), to AEI, which remains the owner of all right, title, and interest in and to the '286 Patent. A true and correct copy of the '286 Patent is attached hereto as Exhibit 2.

12. On November 21, 2000, a patent application was filed with the U.S. Patent and Trademark Office to protect Mr. John Y. Chen's invention entitled "Tear Resistant, Crystalline Midblock Copolymer Gels and Articles," which application was assigned Serial No. 09/721,213. The ownership rights to the invention disclosed and claimed in the application were assigned to AEI.

13. On March 15, 2005, United States Patent No. 6,867,253 B1 (the "'253 Patent'") was duly, validly, and legally issued to AEI, which remains the owner of all right, title, and interest in and to the '253 Patent. A true and correct copy of the '253 Patent is attached hereto as Exhibit 3.

14. The '109 Patent, '286 Patent, and '253 Patent are collectively referred to in this First Amended Complaint as the "Patents."

15. On August 31, 2008, AEI granted an exclusive license to Plaintiff under the Patents pursuant to a Patent Sale and License Agreement.

16. On information and belief, Defendant has been, and is now, infringing one or more of claims of the Patents in violation of 35 U.S.C. § 271(a) by:

- (a) making, importing, using, offering to sell, and/or selling in this judicial district, and elsewhere in the United States, products which embody the inventions claimed in the Patents; and/or
- (b) actively inducing others to infringe the Patents; and/or
- (c) contributing to the infringement of the Patents.

17. Defendant's actions with respect to the Patents are without authority or license from Plaintiff.

18. Defendant has been, and will continue, making, importing, using, offering to sell, and/or selling products that infringe the Patents without a license from Plaintiff.

19. Defendant's conduct as described in this Complaint has been, and will continue to be, willful.

20. As a direct and proximate result of Defendant's infringement, Plaintiff has been damaged and will continue to be damaged in an amount to be determined at trial.

21. As a direct and proximate result of Defendant's infringement of the Patents, Plaintiff has suffered and continues to suffer irreparable harm and impairment of the value of its licensed patent rights, is threatened with continuing loss of sales to its existing and potential customers, is losing and will continue to lose the goodwill of its customers, and is suffering a violation of its licensed patent rights, all of which will continue unless Defendant is preliminarily and permanently enjoined by this Court from infringing the Patents under 35 U.S.C. § 283. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment:

(a) Finding that Defendant has been and is infringing, contributing to the infringement of, and/or actively inducing infringement of the Patents;

(b) Entering preliminary and permanent injunctions against Defendant and its parents, subsidiaries, divisions, directors, officers, employees, agents, representatives, distributors, dealers, successors, and assigns, and all others acting in concert or participation with them, from making, importing, using, offering to sell, and/or selling the inventions of the Patents, practicing the inventions of the Patents, and/or securing or supplying items used to infringe the Patents;

(c) Finding the infringement to be willful;

(d) Ordering an accounting of and awarding Plaintiff such damages, profits, royalties, attorneys' fees, costs, prejudgment interest, and enhanced damages as may be shown by the evidence;

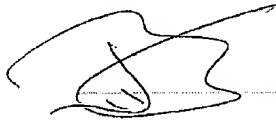
(e) Finding this to be an exceptional case under 35 U.S.C. § 283 and awarding Plaintiff its reasonable attorneys' fees under 35 U.S.C. § 285; and

(f) Awarding Plaintiff such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,



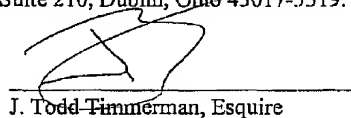
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Attorneys for Plaintiff, Alps South, LLC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 11, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send electronic filing to the following attorneys for Plaintiffs: Patrick J. Risch, Esquire, Hill, Ward & Henderson, P.A., 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33601-2231; Jeffrey S. Standley, Esquire, F. Michael Speed, Jr., Esquire, and Michael R. Stonebrook, Esquire, Standley Law Group LLP, 495 Metro Place South, Suite 210, Dublin, Ohio 43017-5319.



J. Todd Timmerman, Esquire